

REMARKS

Upon entry of the present paper, Applicants will have elected, with traverse, Group I and Species C, directed to Figs. 15-17 and 21, that includes claims 11-16.

In the Official Action, the Examiner required an election of one of two inventions. The Examiner indicated that the two inventions were:

Group I Claims 1-16, drawn to a refrigerator, classified in class 62, subclass 187; and

Group II Claims 17-31, drawn to a method of controlling a refrigerator, classified in class 62, subclass 129.

The Examiner has indicated that Group II and Group I are related as process and apparatus for its practice, respectively. The Examiner indicating that the claimed process can be used with a materially different apparatus. In particular, that the process can be practiced with an apparatus not having a channel.

Applicants respectfully traverse the above Restriction Requirement and submit that it is inappropriate.

MPEP § 806.05(e) sets forth that a process and apparatus for its practice can be shown to be distinct inventions, if either or both of the following can be shown: (A) that the process as claimed can be practiced by another materially different apparatus or by hand; or (B) that the apparatus as claimed can be used to practice another and materially different process.

Contrary to the Examiner's assertions, Applicants assert that the process as claimed cannot be practiced by another materially different apparatus or by hand. For

example, claim 11 recites, inter alia, a damper that controls a flow of cool air through a channel. As disclosed in the specification in the paragraph bridging pages 21 and 22 and shown in figure 16, a damper 62 controls the flow of air through duct or channel 126.

Without a channel, the air would not be able to flow to appropriate section of the refrigerator. The claimed process recites a damper controlling the air flow. The claimed process does not recite a channel but the claimed process could not be practiced without a channel for the air to flow through. Thus, the process controlling the flow of air, as claimed, cannot be practiced by another materially different process or by hand that does not include a channel for the air to flow through as recited by the apparatus claims. Hence, the channel of claims 1-16 is indispensable to the claimed process of claims 17-31.

Thus, Applicants respectfully request that the Examiner withdraw the restriction requirement and include process claims 17-31 with apparatus claims 1-16 because these claims are directed to the same invention.

Moreover, the Examiner has required an election among three species. The Examiner indicating that:

Figs. 5-8 and 11 are directed to species A;

Figs. 12-14 are directed to species B; and

Figs. 15-17 and 21 are directed to species C.

The Examiner indicated that none of the claims are generic.

Applicant notes that, although the various claims recite some different features, this alone is an inadequate basis to render the species restrictable for examination

purposes. As set forth in the U.S. Patent and Trademark Office's guidelines in MPEP § 803, the Examiner "must provide reasons and/or examples to support conclusions," which were not provided by the Examiner. Additionally, the Examiner has not set forth evidence of a serious burden by appropriate explanation, pursuant to the guidelines set forth in MPEP §803. Accordingly, the Examiner is respectfully requested to reconsider his species requirement and find that there would not appear to be a "serious burden" on the Office in examining claims directed to the non-elected invention.

Thus, Applicants respectfully request that the Examiner withdraw the species restriction.

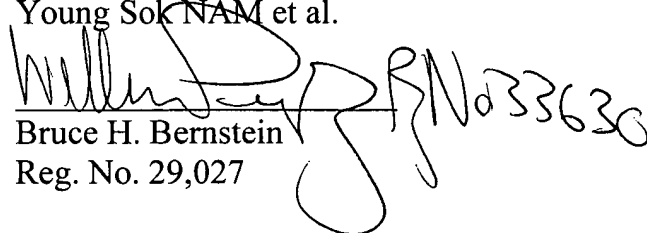
For all of these reasons, and consistent with the Office Policy as set forth in MPEP § 803, Applicants respectfully request that the Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the Restriction Requirement in the present application.

Nevertheless, in order to be fully responsive, Applicants have elected with traverse the invention of Group I and species C, directed to Figs. 15-17 and 21, that includes claims 11-16 in the event that the Examiner chooses not to reconsider and withdraw the Restriction Requirement.

Should the Examiner have any questions or comments regarding the present response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

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